

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 17, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP711-CR

Cir. Ct. No. 2012CF145

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TIMOTHY C. CHRIST,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marinette County: DAVID G. MIRON, Judge. *Affirmed.*

Before Hoover, P.J., Stark and Hruz, JJ.

¶1 PER CURIAM. Timothy Christ appeals a judgment, entered upon his no contest pleas, convicting him of one count of homicide by intoxicated use of a motor vehicle and three counts of operating a motor vehicle while intoxicated, causing injury. Christ also appeals the order denying his postconviction motion

for resentencing. Christ argues the circuit court erroneously exercised its sentencing discretion. We reject Christ's arguments and affirm the judgment and order.

BACKGROUND

¶2 Christ's vehicle struck an oncoming car head-on, killing thirteen-year-old Christopher Croley and severely injuring Croley's mother and two sisters. Christ submitted to a preliminary breath test, which indicated a .262% blood alcohol concentration. Christ ultimately pleaded no contest to one count of homicide by intoxicated use of a vehicle and three counts of operating while intoxicated causing injury, all four counts enhanced by Christ's prior OWI conviction.

¶3 In exchange for his no contest pleas, the State agreed to recommend fifteen years' initial confinement and ten years' extended supervision on the homicide count; and concurrent six-year sentences on each of the injury counts, consisting of three years' initial confinement and three years' extended supervision. Out of a maximum possible fifty-eight-year sentence, the court imposed consecutive sentences totaling thirty-six years, consisting of twenty-one years' initial confinement and fifteen years' extended supervision.¹ Specifically, the court imposed eighteen years' initial confinement and twelve years' extended

¹ Because of his prior OWI conviction, the maximum possible sentence for Christ's homicide conviction was forty years, *see* WIS. STAT. §§ 940.09(1c)(b) and 939.50(3)(c), while the maximum possible sentence for each of the injury convictions was six years. *See* WIS. STAT. § 346.65(3p).

All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

supervision on the homicide conviction and, for each of the injury counts, the court imposed one year of initial confinement and one year of extended supervision. Christ's postconviction motion for resentencing was denied after a hearing. This appeal follows.

DISCUSSION

¶4 Sentencing lies within the circuit court's discretion. *State v. Echols*, 175 Wis. 2d 653, 681, 499 N.W.2d 631 (1993). There is a strong public policy against interfering with the circuit court's sentencing discretion, and sentences are afforded the presumption that the circuit court acted reasonably. *Id.* at 681-82. If the record contains evidence that the circuit court properly exercised its discretion, we must affirm. *State v. Cooper*, 117 Wis. 2d 30, 40, 344 N.W.2d 194 (Ct. App. 1983). Proper sentencing discretion is demonstrated if the record shows that the court "examined the facts and stated its reasons for the sentence imposed, 'using a demonstrated rational process.'" *State v. Spears*, 147 Wis. 2d 429, 447, 433 N.W.2d 595 (Ct. App. 1988) (citation omitted). "To overturn a sentence, a defendant must show some unreasonable or unjustified basis for the sentence in the record." *Cooper*, 117 Wis. 2d at 40.

¶5 The circuit court must consider the principal objectives of sentencing, including protection of the community, punishment and rehabilitation of the defendant, and deterrence to others, *State v. Ziegler*, 2006 WI App 49, ¶23, 289 Wis. 2d 594, 712 N.W.2d 76, and it must determine which objective or objectives are of greatest importance, *State v. Gallion*, 2004 WI 42, ¶41, 270 Wis. 2d 535, 678 N.W.2d 197. In cases where confinement is appropriate, courts should impose the minimum amount of confinement that is consistent with the sentencing objectives. *See id.*, ¶¶44-45. In seeking to fulfill the sentencing

objectives, the circuit court should consider a variety of factors, including the gravity of the offense, the character of the offender, and the protection of the public. *State v. Odom*, 2006 WI App 145, ¶7, 294 Wis. 2d 844, 720 N.W.2d 695. The weight to be given to each factor, however, is committed to the circuit court’s discretion. *See Gallion*, 270 Wis. 2d 535, ¶41.

¶6 A sentencing court can also consider other relevant factors, including, but not limited to:

- (1) Past record of criminal offenses;
- (2) history of undesirable behavior pattern;
- (3) the defendant’s personality, character and social traits;
- (4) result of presentence investigation;
- (5) vicious or aggravated nature of the crime;
- (6) degree of the defendant’s culpability;
- (7) defendant’s demeanor at trial;
- (8) defendant’s age, educational background and employment record;
- (9) defendant’s remorse, repentance and cooperativeness;
- (10) defendant’s need for close rehabilitative control;
- (11) the rights of the public; and
- (12) the length of pretrial detention.

Id., ¶43. Further, although the court should explain the reasons for the particular sentence imposed, “[h]ow much explanation is necessary ... will vary from case to case.” *Id.*, ¶39.

¶7 Before imposing a sentence authorized by law, the court in the present matter thoroughly considered the seriousness of the offenses; Christ’s character, including his prior OWI conviction; the need to protect the public; and the mitigating factors Christ raised. The court placed particular emphasis on protection of the community and punishment, noting that in addition to the loss of life, the three individuals injured by Christ would “bear the scars of this horrific collision for the rest of their [lives].”

¶8 Although the court credited Christ with taking responsibility for his actions, it determined that the community needed protection and there was “a moral need for punishment ... for the taking of a life of one so young and causing these injuries that the [victims] are going to be living with for the rest of their lives.” The court noted “this isn’t a probation sentence” case as “[t]hat would absolutely send the wrong message to the community.” The court continued: “This is such a horrific and tragic incident that was so preventable that there has to be a deterrent effect of this sentence and people have to think twice before they decide to get behind the wheel of a vehicle after they’ve been drinking.”

¶9 Christ nevertheless argues the circuit court erroneously exercised its sentencing discretion by failing to adequately explain why twenty-one years—as opposed to some lesser, but still substantial amount of incarceration—was the least amount of custody necessary to accomplish the sentencing objectives. As our supreme court has acknowledged, however, formulating a term of confinement does not lend itself to mathematical precision. *See id.*, ¶49. Rather, the sentencing court is expected to provide “an explanation for the general range of the sentence imposed.” *Id.* Although a sentencing court should impose the minimum amount of custody consistent with the appropriate sentencing factors, “each sentence must navigate the fine line between what is clearly too much time behind bars and what may not be enough.” *State v. Ramuta*, 2003 WI App 80, ¶25, 261 Wis. 2d 784, 661 N.W.2d 483.

¶10 A sentencing court has an additional opportunity to explain its sentence when challenged by a postconviction motion. *See State v. Fuerst*, 181 Wis. 2d 903, 915, 512 N.W.2d 243 (Ct. App. 1994). At the postconviction hearing, the circuit court further explained:

[G]iven the seriousness of the crime and [Christ's] positive characteristics, the sentencing possibilities effectively ranged from a minimum disposition, more constraining than probation to a disposition less lengthy than the statutory maximum.

....

And I felt that this needed to be a lengthy sentence given the gravity of the loss and the injuries to the survivors. I wanted to make sure that for the rest of Mr. Christ's life this kind of crime would never occur again. With extended supervision someone is going to be supervising him until he's 65. With 21 years of initial confinement, he will be 50 years old when he's released.

With specific reference to the homicide charge, the court acknowledged it could have imposed twenty-five years' initial confinement on that crime alone, adding:

[Eighteen] years was appropriate given the factors that were recited in court, including the loss of life, the high alcohol concentration, barreling out onto the highway with no regard for anyone else, the need to send a message that this will not be tolerated, and the fact that he did have a prior OWI offense.

¶11 The court further determined that the factors it considered showed why within various ranges it “chose the sentence that was closer to the maximum than the minimum.” It is apparent from the sentencing and postconviction hearing transcript that the court properly exercised its discretion, analyzing the relevant factors and using that analysis to arrive at an appropriate sentence. The court adequately explained why the sentence imposed was the least amount of custody necessary to accomplish its stated sentencing objectives.

¶12 Christ alternatively claims the circuit court erroneously exercised its sentencing discretion by failing to explain why it declined to follow any of the sentencing recommendations—ultimately imposing six more years of initial confinement than the State suggested. A circuit court, however, has no obligation

to explain its decision to deviate from any particular sentencing recommendation. *See State v. Grindemann*, 2002 WI App 106, ¶28, 255 Wis. 2d 632, 648 N.W.2d 507. Moreover, at the postconviction hearing, the court emphasized that it had reviewed and compared the recommendations and was cognizant of them at sentencing. Because the circuit court considered relevant sentencing factors, properly weighed them, and imposed a sentence authorized by law, we reject Christ's challenge to the circuit court's sentencing discretion.²

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

² Christ also claimed the court failed to explain why it imposed consecutive sentences. We need not address this argument, however, as Christ concedes that, at the postconviction hearing, “the court provided the missing explanation as to why consecutive sentences were necessary.”

